Petition

81-1655

Office - Supreme Court, U.S.
FILED
FEB 22 1982
ALEXANDER L. STEVAS,
CLERK

No. A-623

In the

SUPREME COURT OF THE UNITED STATES

SIDNEY R. BALDWIN, PETITIONER

-vs-

MINNESOTA COMMISSIONER OF REVENUE

Petition for a Writ of Certiorari to
The Supreme Court of the State of Minnesota

Sidney R. Baldwin
Attorney Pro Se for Petitioner
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QUESTION PRESENTED

1. Whether the evidence presented at the Tax Court trial was sufficient to support a finding that the Petitioner and his organization, the Basic Bible Church of America, Chapter 7909, is operated exclusively for religious purposes and is therefore exempt from personal income taxes.

The lower courts ruled in the negative.

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UNITED STATES CONSTITUTION

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B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978)

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Lucas v. Earl, 281 U.S. 111 (1930)

STATUTES

26 U.S.C. §501(c)(3)

26 U.S.C. §3401(a)(9)

M.S. §290.01, Subd. 20

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REGULATIONS

1.501(c)(3)-1(c)(1)

31.3401(a)(9)-1

REVENUE RULINGS

O.D. 119, 1 C.B. 82
77-290
76-476
74-50
69-124
68-123
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58-515
58-220
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INTRODUCTION

Petitioner requests that a Writ of Certiorari issue to review the Judgment of the Supreme Court of the State of Minnesota in case No. 51878.

CITATION TO OPINIONS BELOW

(Not Reported)

1. The Judgment of the Supreme Court of the State of Minnesota is set forth in full in Appendix A to this Petition.

2. The Order of the Supreme Court of the State of Minnesota denying rehearing in this matter is set out in full in Appendix B to this Petition.

3. The Opinion of the Minnesota Tax Court is set out in full in Appendix D of this Petition.

4. The Order of this Court extending the time in which to file this Petition is set forth in full herein as Appendix C.

JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to 28 United States Code §1257(3).

2. The decision of the Supreme Court of Minnesota was filed on the 28th day of August, 1981.

See Appendix A.

3. The order of the Supreme Court of Minnesota denying rehearing was filed on the 23rd day of October, 1981. See Appendix B.

4. The Notice of Appeal was filed with the Clerk of the Supreme Court of Minnesota on the 8th day of January, 1982.

STATUTES INVOLVED

The Petitioner herein is claiming exemption from State income taxes under Minnesota Statute §290.05, subd. 1(i), which reads in relevant part as follows:

> "Subd. 1. The following corporations, individuals, estates, trusts and organizations shall be exempted from taxation under this Chapter...(i) Any corporation, fund, foundation, trust or association organized for exclusively scientific, literary, religious, charitable, educational, or artistic purposes...if no part of the net income of any such corporation, fund, foundation, trust or association inures to the benefit of any private member, stockholder, or individual."

The applicable federal statute is found at

26 United States Code §501(c)(3), which provides in part as follows:

> "(c) List of Exempt Organizations— The following organizations are referred to in subsection (a):
>
> "(3) Corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition...or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

The respondent has a duty to recognize the exempt status of the Petitioner and his church as an organization organized and operated exclusively for one or more exempt purposes described under 26 U.S.C. §501(c)(3) and Minnesota Statute §290.05, subd. 1(i).

STATEMENT OF THE CASE

A. Disposition below.

1. On August 4, 1978, the Respondent issued his Order assessing additional income taxes against

the Petitioner in the amount of $277.18, including interest. This was the result of the Respondent's disallowance of Petitioner's claim that his receipts were exempt from income taxation due to the fact that he had established an organization described in 26 U.S.C. §501(c)(3) and M.S. §290.05, subd. 1(i).

2. On September 28th, 1978, the Petitioner appealed this assessment to the Minnesota Tax Court and on February 13 and 14, 1980, trial of this matter was held in said court.

3. On July 17th, 1980, the Minnesota Tax Court came down with its decision affirming the Order of the Commissioner of Revenue.

4. After Petitioner's various post trial motions were denied, including a motion for a new trial, Petitioner petitioned the Supreme Court of the State of Minnesota for a Writ of Certiorari. This was done on the 16th day of October, 1980.

5. On November 16, 1980, the Supreme Court of the State of Minnesota granted Certiorari and ordered the case to be heard on the original record made in the Tax Court, together with briefs which were to be submitted by the parties.

6. On August 28th, 1981, the Supreme Court of the State of Minnesota, in its opinion (Appendix A) affirmed the Tax Court.

7. The Supreme Court of the State of Minnesota denied rehearing on the 23rd day of October, 1981.

8. Appellant filed his Notice of Appeal with the Supreme Court of the State of Minnesota on the 8th day of January, 1982.

B. Facts.

In 1977, the Petitioner became familiar with and then became a member of the Basic Bible Church of America. Upon being accepted as a minister of the Basic Bible Church of America, the Petitioner established a Chapter of the Basic Bible Church of America known as the Order of Almighty God, Chapter No. 7909. Under the bylaws of Chapter 7909, said Chapter was to be governed by three of more trustees. The evidence in the Tax Court showed that Chapter 7909 was governed by the Petitioner, his wife and two sons.

The bylaws also provided that the chapter church was to be operated exclusively as a

§501(c)(3) (26 U.S.C. §501(c)(3)) religious organization, and that no part of the net earnings of the church were to inure to the benefit of any private individual. The evidence offered in the Tax Court was extensive as to the operational nature of the church. The Petitioner showed that he functioned at all times as a minister and that none of the net earnings of the church inured to the benefit of any private individual.

As part of the requirements of joining the church, the Petitioner executed a vow of poverty whereby he transfered all of his worldly possessions to Chapter 7909. In addition, he was directed by the president of the Basic Bible Church of America to continue in his employment as an electrician and further, was required to return to the order all funds which he received as an electrician for the support of the religious order. In return, the order was to pay all of the Petitioner's subsistence expenses.

Petitioner testified that he had fulfilled all of the stipulations of being a minister with the Basic Bible Church of America, including the

conducting of regular church services throughout the period in question.

On March 10, 1978, the Petitioner filed his Minnesota Income Tax Return for the year 1977. On the return, Petitioner claimed a deduction of the money which he was paid in 1977, as a contribution to Chapter 7909. Petitioner claimed a refund of $1,498.56, which was equal to the amount withheld from his 1977 paychecks.

The Minnesota Department of Revenue subsequently conducted an audit of the Petitioner's 1977 return, and the Petitioner's contribution deduction was disallowed. The Petitioner's tax was then recomputed and Petitioner was ordered by the Commissioner to pay an additional $277.18 for 1977 income taxes.

REASONS FOR GRANTING THE WRIT

The test for determining whether an organization is an organization described in 26 U.S.C. § 501(c)(3) historically has been whether that organization is organized and operated for one or more purposes described in §501(c)(3). See B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978); Church in Boston v. Commissioner, 71 T.C. 102 (1978); Internal Revenue Regulation 1.501(c)(3)-1(c)(1). Both the Tax Court and the Supreme Court of Minnesota did not address the issue or examine the evidence to determine whether the Petitioner's church was organized and operated exclusively for one or more purposes under §501(c)(3). See Appendix A, footnote 3.

It must be noted that a discussion of the provisions of the federal tax law as it relates to churches is necessary to resolve the question presented here. This is due to the fact that for Minnesota tax purposes, the term "gross income" in its application to individuals, estates and trusts, means the "adjusted gross income as computed for

federal income tax purposes as defined in the Internal Revenue Code of 1954..." Minnesota Statute §290.01, subd. 20. Thus, the federal law is the starting point for determining tax liability at the state level.

The extent of inquiry by the lower courts seemed to be limited to whether the Petitioner could properly assign his income to the church and thereby create an agency relationship between Petitioner as the agent the church as the principal. The lower courts ruled, erroneously, that one could not assign one's income with a vow of poverty and transfer the liability for the tax on that income the the church. The federal law, however, has very plainly and for a long period of time, recognized the ability of members of a religious order who have taken a vow of poverty, to work outside of the order and under directions of the order, and to turn back to the order all monies so earned without federal income tax obligations.

26 U.S.C. §3401(a)(9) specifically provides that the term gross income shall not include remuneration paid:

> For services performed by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of his duties required by such order..."

Moreover, the Treasury Department has promulgated a Revenue Regulation under §3401(a)(9) which, upon review, provides deeper insight to this question. Rev. Reg. 31.3401(a)(9)-1 at paragraph (b)(3)(i) states:

> "If a minister is performing service in the conduct of religious worship or the ministration of sacerdotal functions, such service is in the exercise of his ministry whether or not it is performed for a religious organization."
>
> Paragraph (b)(5)(i) of the same regulation provides:
>
> "If a minister, pursuant to an assignment or designation by a religious body constituting his church, performs service for an organization which is neither a religious organization nor is operated as an integral agency of a religious organization, all service performed by him, even though such service may not involve the conduct of sacerdotal functions, is in the exercise of his ministry."

Paragraph (d) states:

> "Service in the exercise of duties required by a religious order. Service performed by a member of a religious order in the exercise of duties required by such order includes all duties required of the member of the order. The nature of extent of such service is immaterial so long as it is a service which he is directed or required to perform by his ecclesiastical superiors." (Emphasis in original.)

The facts of the case showed that the Petitioner was directed by his ecclesiastical superiors to maintain his employment as an electrician and to use such employment as a vehicle through which to engage in the ministration of sacerdotal functions and the conduct of religious worship, and that all income derived from such employment was turned back to the church herein. Therefore, under the applicable federal law, such income was not taxable to the Petitioner, but to the church itself.

As to the issue of the assignment, the courts below relied upon this Court's ruling in Lucas v. Earl, 281 U.S. 111 (1930) and Rev. Rul.

77-290 to support their conclusion that an assignment or similar transfer of compensation for personal services to another person or entity is ineffective to relieve the taxpayer of federal income tax liability on such compensation.

However, Lucas v. Earl notwithstanding, the IRS has long recognized that members of religious orders or ordained clergy who take vows of poverty and turn income they earn as a result of the church's direction back to the church pursuant to the vow of poverty are not liable for income tax on the amount received. The IRS declared in O.D. 119, 1 C.B. 82:

> "A clergy is not liable for any income tax on the amount received by him during the year from the perish of which he is in charge, provided that he turns over to the religious order of which he is a member, all money received in excess of his actual living expenses, on account of the vow of poverty which he has taken.
>
> "Members of religious orders are subject to tax on taxable income, if any, received by them individually, but are not subject to tax on income received by them merely as agents of the order of which they are

members."

In the case of Blair v. Commissioner, 300 U.S. 5 (1937), this Court recognized the validity of an assignment of income similar to the one herein. The Blair Court held:

> "The one who is to receive the income as the owner of the beneficial interest is to pay the tax. If under the law governing the trust the beneficial interest is assignable, and it has been assigned without reservation, the assignee thus becomes the beneficiary and is entitled to rights and remedies accordingly. We find nothing in the revenue acts which denies him that status." 300 U.S. at 12.

Rev. Rul. 77-290 continues to recognize the validity of the principles enunciated in O.D. 119 above. The ruling states in part:

> "The conclusion of O.D. 119 is supported by two principles, the first of which is that a member of a religious order under a vow of poverty is not immune from federal income tax by reason of such vow, but is subject to federal income tax to the same extent as any other person on income earned or received

> individually. Thus income earned or received by a taxpayer as a principal, and not as an agent, is taxable to the taxpayer. ...The second principle stated in O.D. 119 is that where an agent receives income on behalf of a principal, the income is not taxable to the agent but to the principal.
>
> "Thus, in cases where a member of a religious order receives income as an agent of the order, and, pursuant to a vow of poverty, remits the income to the order, such income is the income of the order and not of the member."

In the instant case, the evidence has shown that the Petitioner has made an irrevocable vow of poverty and without reservation, has assigned all of his possessions, both real and personal, including income, to the church. The church thus becomes the owner of the income. Pursuant to O.D. 119, Rev. Rul. 77-290 and the decision of this Court in Blair v. Commissioner, the lower courts erroneously failed to hold that the Petitioner was not subject to tax on the income in question.

The case and Revenue Rulings cited above are not alien to tax law on the issue of assignments. There have been a host of revenue rulings

recognizing the rights of taxpayers to assign income to other individuals or entities under similar circumstances. They are:

Revenue Ruling: 76-476
74-50
69-124
68-123
65-282
58-515
58-220
57-135.

The failure of the lower courts to conceed the exempt status of the Petitioner and his church in this matter constitutes a departure from the established First Amendment policy of government neutrality in matters of religion. The courts below failed and refused to consider the real question surrounding the exempt status of the Petitioner. That is: Whether his church is organized and operated for one or more exempt purposes described in §501(c)(3). Instead, they chose to use the assignment issue as a "cop-out" and thereby worked to deprive Petitioner of his natural and unalterable rights under the First Amendment freedom of religion clause.

The rulings of the lower court in this case fly right in the face of the federal tax law and in the face of Supreme Court rulings on the issue of government neutrality in matters of religion. What's more, said rulings are not even consistant with Minnesota Tax law on this issue.

A Writ of Certiorari must be issued to the Supreme Court of Minnesota to remedy the deprivation of rights experience by the Petitioner at the hands of the lower courts. Without it, the Respondent is free to prey on each and every church with which he is discontented, without fear of being stopped or even repremanded by the State Courts.

CONCLUSIONS

WHEREFORE, the Petitioner respectfully requests that this Court issue a Writ of Certiorari to the Supreme Court of Minnesota so that a full review of this case can be made.

Dated this 18th day of February, 1982.

Respectfully submitted:

Sidney R. Baldwin
Attorney Pro Se for Petitioner
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Phone (612) 689-5473

CERTIFICATE OF SERVICE

I, the undersigned counsel for the Petitioner, hereby certify that I caused to be served upon counsel for the Respondent, two true and copies of the foregoing Petition for Writ of Certiorari to the Supreme Court of the State of Minnesota, by mailing the same to said counsel's last known address.

Dated this 20th day of February, 1982.

BY:

_____

Sidney R. Baldwin
Attorney Pro Se for Petitioner

Appendix

APPENDIX A

No. Sp. Tax Court Otis, J.

Sidney R. Baldwin,

Relator,

51878 vs.

Commissioner of Revenue,

Respondent.

Endorsed
Filed August 28, 1981
John McCarthy, Clerk
Minnesota Supreme Court

S Y L L A B U S

1. Where a church consists essentially of a single person who has assigned to it his income but retains the right to use church property as he sees fit, neither he nor the church is entitled to exemption from Minnesota income taxation.

2. In the absence of statutory authority, corporations sole are not recognized in Minnesota.

Affirmed.

Considered and decided by the court en banc without oral argument.

O P I N I O N

OTIS, Justice.

Relator seeks review of a decision of the Tax Court rejecting his claim that his 1977 earnings are exempt from income taxation and affirming the order of the Commissioner of Revenue denying refund of $1,498.56 withheld by his employers and assessing an additional $277. We agree that relator is not entitled to the claimed exemption and affirm.

From his employment as an electrician during the year 1977 relator derived a gross income of $21,329.83. [1] On his Minnesota income tax return he reported that he had no net income because he had contributed his entire earnings to the Basic Bible

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[1] See, Minn. Stat. §290.01, subd. 20 (Supp. 1977); I.R.C. §61(a)(1).

Church of America, Chapter 7909. [2] In spite of this claimed "credit" against tax, relator's real claim is that his earnings were exempt because he personally is a tax-exempt church and because he earned the income as an agent for Chapter 7909.

To establish these claims, relator presented evidence that during the year 1977 he learned of the Basic Bible Church of America and as a consequence contacted its president, Jerome Daly. Without any prior formal training, relator took a short oral examination from Daly and on October 5, 1977, received from him a certificate of ordination as a minister of the Basic Bible Church of America and a certificate of doctorate of divinity. A month later relator received two documents, drafted by Daly, a church charter and some bylaws pursuant to which he was "ordained and established" as an official church known as the Order of Almighty God, Chapter 7909.

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[2] If relator had constributed (sic) all of his income to an organization described in Minn. Stat. §290.21, subd 3(b) (1980), he was entitled to deduct only 10% of his gross income for such contribution pursuant to Minn. Stat. §290.21, subd. 3(f)(i) (1980).

These documents provide that the parent organization, the Basic Bible Church of America, and Chapter 7909 are completely independent and separate. Relator's charter provides that Chapter 7909 is to be governed by trustees, but the bylaws vest sole authority to govern the chapter in relator as its lifetime "head" and grant him sole authority to use the funds and other property of the chapter as he sees fit. The other trustees, who are relator's wife and sons, have no right to vote. The charter also required relator to take a vow of poverty, by which he transfered all of his income to the Chapter.

After receiving these documents and signing the vow, relator continued to work as an electrician but deposited his paychecks in a bank account in the name of the Basic Bible Church of 1985 Yorkshire, where he and his family live. Only relator could draw checks on this account, and he used it to pay personal debts and living expenses as well as mortgage payments, taxes, and interest on 1985 Yorkshire although his wife is record owner of the home.

After reviewing this evidence, the Tax Court rejected both claims relator advances for tax exemption. The more novel claim is that he is entitled to exemption because he personally is a church. Conceding relator's right to believe that he is a church in his own person, the Tax Court held that such a church in nevertheless not tax exempt. The ruling was clearly required by Minn. Stat. §290.05, subd. 1(i) (1980), which provides in pertinent part:

> The following corporations, individuals, estates, trusts, and organizations shall be exempted from taxation under this Chapter*** :
>
> ****
>
> (i) Any corporation, fund, foundation, trust, or association organized for exclusively scientific, literary, religious, charitable, educational, or artistic purposes, **** if no part of the net income of any such corporation, fund, foundation, trust or association inures to the benefit of any private member, stockholder or individual ***.

Id. (emphasis added). Relator is not a "corporation, fund, foundation, trust, or

association" and thus does not qualify for tax exemption. [3]

Although relator urges that he is a corporation sole and therefore qualifies under this statute, we are not persuaded by this argument. Generally, corporations sole have not been recognized in this country in the absence of specific statutory authorization. Wright v. Morgan, 191 U.S. 55, 59, 24 S.Ct. 6, 48 L.Ed. 89 (1903). No statute in this state authorizes their existence.

The other theory on which relator claims tax exemption is that by reason of his vow of poverty his income was earned as an agent of Chapter 7909. We discern no merit to this claim either. As stated, the alleged principal for whom relator acted, Chapter 7909, is not a tax-exempt organization within the meaning of section 290.05, subd. 1(i). Relator's vow of poverty was in effect an attempted anticipatory assignment income,

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[3] Nor does it appear likely that relator could establish that no part of the net income of Chapter 7909 "inures to the benefit of any private *** individual." Minn. Stat. §290.05, subd. 1(i) (1980).

ineffective to avoid tax liability. Lucas v. Earl, 281 U.S. 111, 50 S.Ct. 244, 74 L.Ed. 731 (1930); Francis E. Kelley, 62 T.C. 131 (1974); Drew v. Commissioner of Taxation, 222 Minn. 186, 23 N.W.2d 565 (1946); Rev. Rul. 290 1977-2 C.B. 26. In fact, relator's stated position that he personally is the church to which he assigned his income destroys the basis of his claimed agency since he could not have earned his income as an agent for himself.

Affirmed.

APPENDIX B

STATE OF MINNESOTA

OFFICE OF THE CLERK OF SUPREME COURT

October 23, 1981

Sidney R. Baldwin,

Relator,

vs. 51878

Commissioner of Revenue,

Respondent.

Sir:

You will please take notice that on this date the following order was entered in the above entitled cause:

ORDERED, that the petition for reargument herein be and the same hereby is denied and stay vacated.

Your respectfully,

John McCarthy

Clerk Supreme Court

APPENDIX C

Supreme Court of the United States

No. A-623

SIDNEY R. BALDWIN,

Petitioner

v.

MINNESOTA COMMISSIONER OF REVENUE

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause, be and the same is hereby extended to and including February 22, 1982

/s/ Harry A. Blackmun

Associate Justice of the Supreme

Court of the United States

Dated this 12th

day of January, 19 82

APPENDIX D

STATE OF MINNESOTA

TAX COURT

Sidney R. Baldwin, Appellant,

-vs-

The Commissioner of Revenue, Appellee.

Docket No. 2752 Order Dated July 27, 1980.

This is an appeal from an Order of the Commissioner of Revenue denying a claim for refund of $1,498.56 and assessing an additional tax in the amount of$277.18, including interest for the taxable period ending December 31, 1977. The Appellant claims that all of his income is exempt from Minnesota Income Taxes because it was assigned through a vow of poverty to an auxiliary church of the Basic Bible Church of America known as the Order of Almighty God, Chapter 7909. The issue is whether or not Appellant's income is subject to Minnesota State Income Tax.

Sidney R. Baldwin, appeared pro se, Paul R. Kempainen, Special Assistant Attorney General,

appeared for appellee.

DECISION

The Order of the Commissioner of Revenue is hereby affirmed.

FINDINGS OF FACT

Earl B. Gustafson

1. The Appellant, Sidney R. Baldwin, is a cash basis taxpayer residing at 1985 Yorkshire Avenue, St. Paul, Minnesota.

2. During the taxable year 1977, Appellant was employed as an electrician by both Premier Electric Construction Corp. of Minneapolis, Minnesota, and by the International Brotherhood of Electrical Workers, Local 292. By reason of his employment Appellant was paid $20,350.02 by Premier Electric and $979.81 by Local 292.

3. During the year 1977, Appellant was an employee of both Premier and Local 292, as indicated by the compensation paid to him and by the fact that both employers covered the Appellant with their qualified employee pension plans and also because Appellant was covered as an employee in Local 292's health insurance plan.

4. Sometime during the taxable year 1977 the Appellant heard about an organization known as the Basic Bible Church of America, and shortly thereafter contacted its president, Jerome Daly.

5. After this contact the Appellant received from Jerome Daly, on or about October 5, 1977, a certificate of ordination purporting to ordain Appellant as a minister, and a certificate of doctorate of divinity. Aside from a short oral examination during which Appellant wrote down his answers, Appellant took no formal training for either of these certificates. In connection with receiving these documents Appellant paid Jerome Daly the sum of $750.00, sometime between October 5, 1977 and November 5, 1977.

6. After contributing this money, Appellant received from Jerome Daly, on or about November 5,1977, a church charter and a set of by-laws purportedly establishing the Appellant as an auxiliary church known as the Order of Almighty God, Chapter 7909 (hereafter "Chapter 7909"). The Appellant took no part in drafting and of these documents. Instead, the documents were drafted by

Jerome Daly, and the Appellant relied upon the advice and counsel of Jerome Daly in setting up Chapter 7909 and handling the income tax questions relating thereto.

7. Under the church charter, Chapter 7909 was supposedly governed by three or more trustees, who were named in the charter as Sidney Baldwin (the Appellant herein), Sharon R. Baldwin (the Appellants wife), Brett J. Baldwin (the Appellant's son) and Kipp Baldwin (also Appellant's son). However, under the Chapter by-laws the sole authority to govern Chapter 7909 was vested in a life-time office called the "Head of the Chapter", who was named in the by-laws to be the Appellant herein. Neither the trustees nor any other members had the right to vote and could act in an advisory capacity only. The Head of the Chapter, Appellant, also had sole authority to control and dispense the funds and property of Chapter 7909 [illegible] own support.

8. In all relevant matters concerning finances, property, and spending of funds, there was complete separation and independence between the national organization known as the Basic Bible

Church of America and the local Chapter 7909 controlled by the Appellant herein.

9. Under the by-laws, total discretion was vested in the Appellant to spend the funds of Chapter 7909 without any interference form Jerome Daly or the national Basic Bible Church.

10. Chapter 7909 has never been incorporated under the laws of any state.

11. On the same day he received his church charter and by-laws, Appellant signed a vow of poverty form purportedly transfering all his income to Chapter 7909. Thereafter, Appellant deposited his paychecks earned as an electrician into a bank account held in the name of Basic Bible Church of 1985 Yorkshire. The only person authorized to draw checks on this account was the Appellant. The money in this account was then used by the Appellant to pay his personal debts and living expenses, plus some of the mortgage payments, taxes and interest on Appellant's home which was owned in the name of the Appellant's wife and continued to be his personal residence and that of his family.

12. After receiving his ordination

certificate and signing the vow of poverty form, the Appellant continued in his same employment as an electrician.

13. On or about March 10, 1978, the Commissioner received Appellant's 1977 Minnesota individual income tax return with W-2 forms attached. On this return the Appellant claimed a deduction of his entire income, $21,329.83, as a contribution to his local Chapter 7909. As a result of this purported deduction, Appellant claimed a refund of $1,498.56, which was equal to the amount withheld from his 1977 paychecks. No other deductions or credits of any kind were claimed by the Appellant on his 1977 return.

14. The Minnesota Department of Revenue subsequently conducted an audit of the Appellant's 1977 return, and the Appellant's contribution deduction claim was denied. The Appellant's correct 1977 income tax was thereupon computed by the Department of Revenue, using the standard deduction and whatever credits available information indicated the Appellant was entitled to receive. The Appellant filed an administrative protest to the audit's

findings and an administrative hearing was held on July 25, 1978. No change was made in the Audit's findings as a result of this hearing.

15. On August 4, 1978, the Commissioner of Revenue issued his Order assessing additional income tax liability against the Appellant in the amount of $277.18, including interest. The Appellant has filed a timely appeal with the Tax Court from this Order.

MEMORANDUM

The Appellant, Sidney R. Baldwin, is a cash basis taxpayer who earned $21,329.83 in 1977, working as a journeyman electrician. In his 1977 Minnesota Income Tax Return he indicated under Itemized Deductions: "Entire Salary is turned over to the Basic Bible Church of America. See attached Federal Return."

Although Appellant claimed on his return that his entire salary was a deduction as a religious contribution,it is evident from the hearing and the post-trial briefs that he is claiming a tax exemption, not a tax deduction. Under Minn. Stat. 290.21, subd. 3(f)(i), deductions for charitable and religious contributions are limited

to 10% of an individual taxpayer's gross income. Here Appellant claims 100% of his income is tax exempt. His fundamental claims seem to be that all of his earnings were either earned by himself as a tax exempt "church", or that he didn't actually receive these earnings individually, but merely as the agent for a tax exempt "church". Under this later theory, he was only a conduit for these earnings that passed immediately through him to a "church" he founded known as the Order of Almighty God: Chapter No. 7909. This Chapter is affiliated with the parent church, Basic Bible Church of America, Minneapolis, Minnesota.

The first claim - that Sidney Baldwin, the individual, is a "church" exempt from Minnesota income taxes - is quickly disposed of. Sidney Baldwin may be a "church" according to his own beliefs, according to scripture, and according to some theologians, and his right to hold and proclaim this belief is protected by the First Amendment to the United States Constitution. Sidney Baldwin, the individual, is not, however, a tax exempt "church" under Minnesota tax law. Minnesota Statute 290.05,

Subd. 1(i) is the applicable statute and it reads in pertinent part as follows:

> Subd. 1. The following corporations, individuals, estates, trusts, and organizations shall be exempted from taxation under this Chapter. . . (i) Any corporation, fund, foundation, trust or association organized for exclusively scientific, literary, religious, charitable, educational, or artistic purposes. . . . .if no part of the net income of any such corporation, fund, foundation, trust or association inures to the benefit of any private member, stockholder, or individual. (emphasis added)

The Appellant not being a "corporation, fund, foundation or association" does not qualify for tax exemption.

The alternative theory of tax exemption argued by Appellant is based upon a "vow of poverty" which was introduced into evidence. By this "vow of poverty" Appellant assigned all of his income to his "church", Chapter No. 7909 of the Order of Almighty God. He reasons that this means he never received the money and therefore it is not taxable to him. The "church" of course, is claimed to be tax exempt and therefore his earnings are never taxed.

It is a settled principle of income tax law that all income is taxed to the party who earns it, and that tax liability may not be avoided by an anticipatory assignment of that income to another. Lucas v. Earl, 281 U.S. 111, 50 S. Ct. 241, 74 L. Ed. 731 (1930); Drew v. Commissioner of Taxation, 222 Minn. 186, 23 N.W. 2d 565 (1946); Fury v. Commissioner of Revenue, Tax Ct. Dkt. #2626 (Aug. 24, 1978). Identical claims of assignment of income to a "church" through a "vow of poverty" were made in the case of Fury v. Commissioner of Revenue, Tax Ct. Dkt. #2629. This Court denied these claims and affirmed the Commissioner. The Fury case was appealed to the Minnesota Supreme Court which affirmed summarily on June 11, 1979. There are no significant facts that distinguish this case from the Fury case. Fury v. Commissioner, supra, therefore controls and the Commissioner's Order should be affirmed.

In his post-trial brief the Commissioner raised additional grounds for denying Appellant's claim for tax exemption including the complete control Appellant exercises over his "church" and

also the separation between Chapter 7909 and the parent church, Basic Bible Church of America, which would prevent Chapter 7909 from automatically acquiring any tax exempt or non-profit designation that might be obtained by the parent church. We have no need to discuss these issues in deciding this case but our failure to address them should not be taken to mean that the Commissioner's arguments are without merit.

/s/ Earl B. Gustafson

Earl B. Gustfson, (sic) Judge
Minnesota Tax Court

Earl B. Gustafson, Court Administrator of the Tax Court, State of Minnesota, does hereby certify that the attached instrument is a true and correct copy of the original on file and of record in my office.

Dated this 17th day of July, 1980

/s/ Bev M. Geiness, Deputy Clerk

Docket No. 2752

Opposition

Supreme Court, U.S.
FILED
MAR 26 1982
ALEXANDER L. STEVAS
CLERK

81-1655

No. A-623

IN THE

Supreme Court of the United States

October Term, 1981

SIDNEY R. BALDWIN,

Petitioner,

vs.

MINNESOTA COMMISSIONER OF REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the personal income earned by Petitioner while employed in his normal job as an electrician is subject to Minnesota's state income tax, notwithstanding Petitioner's claim that he has personally created himself as an allegedly tax exempt church to which all his income has supposedly been assigned under a vow of poverty.

The Respondent, Minnesota Commissioner of Revenue, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Minnesota Supreme Court's opinion in this case. That opinion is reported at 309 N.W.2d 750.

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JURISDICTION

Petitioner is attempting to invoke the jurisdiction of this Court under 28 U.S.C. § 1257(3). (Pet. for Writ, p. 1).[1] This statutory provision deals solely with review by writ of certiorari.

However, we note that Petitioner has also filed a Notice of Appeal with the Clerk of the Minnesota Supreme Court on January 8, 1982. (Pet. for Writ, p. 2). Since this appeal was not properly docketed with this Court within ninety days, or any extension thereof, after the entry of the Minnesota Supreme Court's judgment, we can only assume that Petitioner is no longer seeking to invoke jurisdiction under either 28 U.S.C. § 1257(1) or 28 U.S.C. § 1257(2).

STATEMENT OF THE CASE

This is a Minnesota state income tax case which presents a question of purely state law, to wit: whether an individual taxpayer can totally exempt both himself and his income from Minnesota income tax through the simple device of making himself into what he calls a "personal church". The tax year involved is 1977.

The taxpayer and Petitioner herein, Sidney R. Baldwin, was employed as an electrician during the year 1977 by two private employers who paid him total compensation for that year in the amount of $21,329.83. See Minn. Tax Court Findings of Fact 2 and 3. (A. 30). Sometime in late 1977, the taxpayer came

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[1] Throughout this brief the abbreviation "Pet. for Writ" stands for the Petition for a Writ of Certiorari to the Supreme Court of the State of Minnesota herein. The abbreviation "A.—" is a reference to the Appendix contained in the Petition.

into contact with an organization called the Basic Bible Church of America, headed by one Jerome Daly. See Minn. Tax Court Finding of Fact 4. (A. 31). The taxpayer received from Jerome Daly a certificate of ordination and a certificate of doctorate of divinity. See Minn. Tax Court Finding of Fact 5. (A. 31). Aside from a short oral examination the taxpayer took no formal training for either of these certificates, nor did he ever attend a seminary. *Ibid.* The taxpayer also received a church charter and a set of by-laws purportedly establishing him as an auxiliary church known as the Order of Almighty God, Chapter 7909 (hereafter "Chapter 7909"). See Minn. Tax Court Finding of Fact 6. (A. 31). In connection with receiving these documents the taxpayer paid Jerome Daly the sum of $750.00. *Ibid.*

Under the charter there was complete separation and independence in all financial matters between the parent organization, the Basic Bible Church of America, and the taxpayer's Chapter 7909. See Minn. Tax Court Finding of Fact 8. (A. 32). Furthermore, although the taxpayer's charter provided that Chapter 7909 is to be governed by trustees, the by-laws vested sole authority to govern the chapter in the taxpayer-Petitioner as its lifetime "head", and granted him sole authority to use the funds and other property of the chapter as he sees fit. The other trustees, who are the taxpayer's wife and sons, have no right to vote. See Minn. Tax Court Finding of Fact 7. (A. 32).

On his 1977 income tax return the taxpayer claimed that his entire income was deductible as a contribution to his personal church, i.e., Chapter 7909. See Minn. Tax Court Finding of Fact 13. (A. 34). This resulted in a claimed tax liability of zero. Upon audit of this return, the Minnesota Commissioner

of Revenue disallowed the claimed deduction and calculated the correct tax, resulting in a Commissioner's Order dated August 4, 1978, denying taxpayer's claimed refund of $1,498.56, and assessing additional income tax liability of $277.18, including interest to the date of the Order.

The taxpayer appealed from this Order to the Minnesota Tax Court. Trial was held on February 13-14, 1980, Judge Earl B. Gustafson presiding. At that trial it became evident that taxpayer was seeking a total tax exemption, not merely a tax deduction. (A. 21, and 309 N.W.2d at 751). No federal constitutional issues were raised at the trial. On July 17, 1980, the Minnesota Tax Court issued its decision affirming the Order of the Commissioner in all respects. (A. 29-A. 39). The taxpayer made a post-trial motion for Amended Findings of Fact and New Trial, which was heard by the Minnesota Tax Court on September 10, 1980. On September 17, 1980, the Minnesota Tax Court issued its Order denying taxpayer's motion.

On certiorari, the Minnesota Supreme Court affirmed the decision of the Minnesota Tax Court. (A. 19-A. 25). The taxpayer filed a petition for rehearing, which was denied by the Minneosta Supreme Court on October 23, 1981. (A. 26).

REASONS FOR DENYING THE WRIT

I. THERE IS NO SUBSTANTIAL FEDERAL QUESTION PRESENTED IN THIS CASE.

It is axiomatic that before this Court can obtain jurisdiction under any part of 28 U.S.C. § 1257, there has to have been a substantial federal question raised, litigated and decided in the state court proceedings. See *Zucht v. King*, 260 U.S. 174, 43 S.Ct. 24 (1922). See also *Palmer Oil Corp. v. Amerada Corp.*, 343 U.S. 390, 72 S.Ct. 842 (1952).

In the present case, the issue raised is neither substantial nor federal in character. No matter which view one takes of the Question Presented,[2] the fact remains that this lawsuit was so correctly decided below, and so much a question of purely state rather than federal law, that it does not warrant review by this Court on certiorari.

Petitioner's Question Presented is framed in terms of a simple factual dispute. As he says on the first page of his Petition, the issue is:

> Whether the evidence presented at the Tax Court trial was sufficient to support a finding that the Petitioner and his organization, the Basic Bible Church of America, Chapter 7909, is operated exclusively for religious purposes and is therefore exempt from personal income taxes.

If Petitioner is correct in his assertion that the Question Presented is purely a matter of weighing the evidence, then the writ should be denied because it has long been established that this Court will not review a decision of a state court upon

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[2] Both the Petitioner and Respondent have submitted different versions of the real Question Presented in this case.

a question of fact that is supported by substantial evidence. *General Motors Corp. v. Washington*, 377 U.S. 436, 441-442, 84 S.Ct. 1564, 1568 (1964); *Fry Roofing Co. v. Wood*, 344 U.S. 157, 160, 73 S.Ct. 204, 206 (1952); *Grayson v. Harris*, 267 U.S. 352, 357-358, 45 S.Ct. 317, 319 (1925); *Pure Oil Co. v. Minnesota*, 248 U.S. 158, 164, 39 S.Ct. 35, 38 (1918). The Minnesota Tax Court's detailed Findings of Fact (A. 30-A.35) were clearly supported by the record, and the Minnesota Supreme Court did not disturb those findings on review.

Moreover, Petitioner has made no assertion that his case (involving only his own personal Minnesota income tax liability for the year 1977) is in any way of general importance beyond the particular facts of his situation. He has also failed to cite any actual or potential conflicts of decision between the Minnesota Supreme Court and other courts in the land. Nor is there any conflict among United States Circuit Courts of Appeal on this question. Accordingly, it is quite clear that Petitioner's Question Presented is not substantial enough for this Court's attention.

This lawsuit also fails to present a question of federal law, either constitutional or statutory. There was certainly no specific federal constitutional claim made by Petitioner in either the Minnesota Tax Court or the Minnesota Supreme Court below, as attested to by the fact that neither state court addressed any such constitutional questions in their decisions. (See A. 29-A. 39 and A. 19-A. 25). As this Court has stated many times, the failure of the highest state court to pass upon a federal question raises the presumption that no such federal question was properly presented in the state courts. *Fuller v. Oregon*, 417 U.S. 40, 50, n. 11, 94 S.Ct. 2116, 2123, n. 11 (1974); *Street v. New York*, 394 U.S. 576, 582, 89 S.Ct. 1354, 1360 (1969).

II. THE ISSUE IN THIS CASE IS PURELY A QUESTION OF STATE LAW.

The only question in this case has been whether, under Minnesota's state income tax law, the Petitioner and his income were exempt from the Minnesota income tax. As the Minnesota Supreme Court stated in its opinion below:

> [R]elator's real claim is that his earnings were exempt because he personally is a tax-exempt church and because he earned the income as an agent for Chapter 7909.

309 N.W.2d at 751.

The Minnesota Supreme Court properly answered this claim solely by reference to Minnesota law; specifically Minn. Stat. § 290.05, subd. 1(i) (1980), which is the Minnesota statute dealing with income tax exemptions for exclusively religious organizations. 309 N.W.2d at 752. There was no need for the Minnesota Supreme Court to refer to any federal statute in resolving this question, nor did it do so. Furthermore, the Minnesota Supreme Court's decision does not conflict with any federal statute.

Petitioner's citation of two federal statutes, 26 U.S.C. § 501 (c) (3) and 26 U.S.C. § 3401(a) (9), (Pet. for Writ, pp. 8-10) is simply irrelevant to the present case. Neither of these federal statutes purports to place any restrictions on the power of the states to enact their own income tax exemption statutes. Nor do these federal statutes restrict the Minnesota Supreme Court from interpreting the Minnesota exemption statute in the way in which it did.

In any event, it is clear that even under 26 U.S.C. § 501(c) (3), the Petitioner would fail to meet his heavy burden of proving a personal tax exempt status, especially in view of the

clear evidence that his personal church, Chapter 7909, exists primarily for, and does in fact serve, the private interests of its founder, the Petitioner herein.

The recent United States Tax Court case of *Basic Bible Church*, 74 T.C., No. 62, ¶ 74.62 Ph TC (filed July 28, 1980), presented virtually identical facts to those in this case. In *Basic Bible Church*, the petitioner was another local "auxiliary" of the Basic Bible Church of America, called Chapter 4017. It was founded and controlled in the same manner as Chapter 7909 herein, and it too sought tax exempt status, only under federal law rather than any sate law. In denying the exemption claim, the United States Tax Court said in its official syllabus:

> Petitioner, having been denied tax-exempt status as a religious organization under sec. 501(c) (3), I.R.C. 1954, as amended, petitioned this Court for a declaratory judgment pursuant to sec. 7428. A subsidiary or auxiliary church of the Basic Bible Church, petitioner is not controlled, directed or managed by its parent, is not liable for its parent's debts, and owns its property separately. Similarly, the Basic Bible Church is not liable for petitioner's debts, obligations, or liabilities.
>
> X, petitioner's founder and one of its two ministers, controls all of petitioner's financial decisions. X and Y, X's wife and petitioner's other minister, executed vows of poverty, transferred all of their possessions and income to petitioner under the condition subsequent that their gifts will revert to them if petitioner is not granted tax-exempt status, and filed a notice with X's secular employer to cease withholding all taxes from his wages. Over 96 percent of the total contributions received, mostly from

> X & Y, was expended on X's subsistence allowance, on X and Y's unsubstantiated travel expenses, and on utilities and upkeep of X and Y's house, which also serves as petitioner's parsonage. Less than 1 percent of petitioner's contributions were spent for directly related church purposes.
>
> * * * * *
>
> [H]eld, . . . , *petitioner is not entitled to exemption from Federal taxation under secs. 501(a) and 501(c) (3), I.R.C. 1954, as amended, because it fails the operational test of sec. 501(c) (3) in that petitioner serves the private interests of its founder and his family and, in so doing, serves a substantial nonexempt purpose.*

(Emphasis added.)

Likewise, even if it were at issue in the present case, which it isn't, Petitioner's Chapter 7909 would not be entitled to exempt status under federal law because it clearly serves the private interests of its founder, Sidney Baldwin, who is the Petitioner herein.

But this Court need not get into such a hypothetical federal question. This suit is purely and simply a question of state income tax law, upon which the Minnesota Supreme Court has the last word. No federal question of a substantial nature has been presented or decided. Indeed, Petitioner's entire case, especially his claim that he is personally a tax exempt church, is so insubstantial and devoid of merit as to be labelled frivolous. Accordingly, this Court should deny review.

CONCLUSION

For these reasons, this petition for a writ of certiorari should be denied.

Respectfully submitted,

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